

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:5

PLR-113039-15

Date:

August 28, 2015

Legend

Parent =

Sub 1 =

Sub 2 =

Sub 3 =

Date 1 =

Date 2 =

Date 3 =

a =

b =

c =

Company Official =

Tax Professional =

Dear :

This letter responds to a letter dated April 10, 2015, requesting on behalf of Parent an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to file an election. Parent is requesting an extension of time to file an election under § 1.1502-32(b)(4) of the Income Tax Regulations to treat a portion of the loss carryovers of Sub 2 as expiring immediately before Sub 2 became a member of the Parent consolidated group. Additional information was received in subsequent correspondence dated July 7, 2015. The material information is summarized below.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

For the year at issue, Parent was the common parent of a consolidated group. Parent wholly owned Sub 1.

Before Date 1, Sub 2 was a stand-alone entity. On or before Date 1, Sub 1 formed Sub 3 as a wholly owned subsidiary. On Date 1, Sub 1 acquired the stock of Sub 2 by merging Sub 3 into Sub 2. The Date 1 acquisition was a qualifying cost basis transaction within the meaning of § 1.1502-32(b)(4)(ii)(A). The Parent consolidated group filed a consolidated Federal income tax return for the taxable year that ended Date 2.

Sub 2 had loss carryovers from separate return limitation years (within the meaning of § 1.1502-1(f)) of \$a that were limited by § 382. Parent has supplied information demonstrating that of the \$a total of Sub 2's loss carryovers, no more than \$b of those losses usable (absent the dissolution of Sub 2's business operations) under § 382. Parent has requested an extension of time to make an election under § 1.1502-32(b)(4) to treat \$c (the excess of \$a over \$b) of Sub 2's loss carryovers as expiring immediately before Sub 2 became a member of the Parent consolidated group (the "Election").

Parent has represented that the Parent consolidated group is not seeking to alter a return position for which an accuracy-related penalty has been or could be imposed under § 6662 at the time of the ruling request.

The Election was due on Date 3. For various reasons, however, Parent failed to make the Election in a timely manner. Subsequently, this request was submitted, under § 301.9100-3, for an extension of time to file the election.

Section 1.1502-32(a)(1) provides rules for adjusting the basis of the stock of a subsidiary (S) owned by another member (M) to reflect S's distributions, and S's items of income, gain, deduction, and loss taken into account for the period that S is a member of the consolidated group. Section 1.1502-32(b)(2) provides that M's basis in S's stock is adjusted to reflect, among other things, S's noncapital, nondeductible expenses. Section 1.1502-32(b)(3)(iii) provides that an expiring loss carryover attributable to S is a noncapital, nondeductible expense.

Section 1.1502-32(b)(4)(i) provides that if a corporation has a loss carryover from a separate return limitation year when it becomes a member of a consolidated group, the group may make an irrevocable election to treat all or any portion of the loss carryover as expiring for all Federal income tax purposes immediately before the corporation becomes a member of the consolidated group. Section 1.1502-32(b)(4)(iv) provides that the election for each member whose loss carryover is deemed to expire must be made in a separate statement filed with the consolidated group's income tax return for the year the corporation becomes a member.

Section 301.9100-1(a) states that §§ 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. Under § 301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Code except subtitles E, G, H, and I.

Section 301.9100-2 provides automatic extensions of time for making certain elections while § 301.9100-3 provides for extensions of time for making regulatory elections that do not meet the requirements of § 301.9100-2. Section 301.9100-3(a) provides that requests for relief will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

The time for filing an election to treat all or a portion of the loss carryovers of a corporation as expiring before it becomes a member of a consolidated group is fixed by the regulations (i.e., § 1.1502-32(b)(4)(iv)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Parent to file the Election, provided Parent establishes that it acted reasonably and in good faith, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government.

Information, affidavits, and representations submitted by Parent, Company Official, and Tax Professional explain the circumstances that resulted in the failure to timely file a valid Election. The information establishes that the request for relief was filed before the failure to make the Election was discovered by the Internal Revenue Service and

that Parent reasonably relied on a qualified tax professional who failed to make or advise Parent to make the Election. See §§ 301.9100-3(b)(1)(i) and (v).

Based on the facts and information submitted, including the representations made, we conclude that Parent has established it acted reasonably and in good faith in failing to timely file the Election, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government. Accordingly, an extension of time is granted under § 301.9100-3, until 60 days from the date on this letter, for Parent to amend its consolidated Federal income tax return for the taxable year that ended Date 2 to include the Election as described above.

The above extension of time is conditioned on the taxpayers' (Parent and the members of its consolidated group) tax liability (if any) being not lower, in the aggregate, for all years to which the Election applies, than it would have been if the Election had been timely made (taking into account the time value of money). No opinion is expressed as to the taxpayers' tax liability for the years involved. A determination thereof will be made by the Director's office upon audit of the Federal income tax returns involved.

We express no opinion with respect to whether Parent qualifies substantively to make the Election, the amount of any net operating losses of Sub 2, the amount of any § 382 limitation, or the amount of net operating losses that could be utilized prior to their expiration. No opinion is expressed as to the tax effects or consequences of filing the Election late under the provisions of any other section of the Code and regulations, or as to the tax treatment of any conditions existing at the time of, or resulting from, filing the Election late that are not specifically set forth in the above ruling. For purposes of granting relief under § 301.9100-3, we relied on certain statements and representations made by Parent and its representatives. However, all of the essential facts must be verified. In addition, notwithstanding that an extension is granted under § 301.9100-3 to file the Election, penalties and interest that would otherwise be applicable, if any, continue to apply.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

In accordance with the Power of Attorney on file with this office, copies of this letter are being sent to your authorized representatives.

Sincerely,

Ken Cohen

Ken Cohen

Senior Technician Reviewer, Branch 3

Office of Associate Chief Counsel (Corporate)

cc: